IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 392 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAMBIRSINH R DAKRE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 392 of 2000

MR YOGESH S LAKHANI for Petitioner No. 1

MR BD DESAI PUBLIC PROSECUTOR for Respondent No. 1

MR HARSHAD J SHAH for Respondents No. 2-3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/02/2002

ORAL JUDGEMENT

#. This is a Revision Application under Section 397 read with Section 401 of the Criminal Procedure Code, 1973, challenging the judgment and order dated 29.6.2000 recorded by the learned Additional Sessions Judge, Vadodara in Criminal Revison Application No.121/2000 under which the learned Additional Sessions Judge set aside the order passed below Ex.16 in Criminal Case No.3413/1999 by the learned Chief Judicial Magistrate, Vadodara and directed that the trial Court shall proceed in accordance with the law and in accordance with the observations made by the learned Addtional Sessions Judge in his judgment. The learned Additional Sessions Judge also directed that in case of necessity, the trial Court will be at liberty to direct the accused persons to remain present before the Court.

#. The main grievance of the present petitioner, original comploainant is that when the plea of the accused is required to be recorded and if the accused persons remain absent and if the plea of the learned advocate for the applicant is recorded by the learned Magistrate, then it may be that the accused persons or any of them may take up a defence in future that the plea has not been legally recorded and the recording of the plea of the advocate is illegal and that would vitiate the entire proceeding and, therefore, the trial de novo should be started and at a later stage of the proceeding, the entire efforts of the complainant petitioner would be frustrated and there would be serious injustice to the petitoner and, therefore the accused persons should be directed to remain present before the Court concerned.

#. At this stage, Mr.H.J.Shah, learned advocate for the contesting respondents and original accused persons has made a statement that even if the accused persons remain absent and if the plea of their advocate is recorded with the permission of the Court, then in that event the accused persons will not and cannot take such a defence at any stage of the proceedings.

#. In that view of the matter, the Revision Application does not survive for decision on merits. It is true that the Sessions Court has granted almost permanent exemption to the accused persons from remaining present before the trial Court. At the same time, the learned advocate for the contesting respondents and original accused persons states that in case, the Court directs the accused persons then in that event the accused will certainly remain present in Court. It cannot be said at this juncture as to what would be the necessity on a particular date for such a direction. Any way, the Court

will be at liberty to insist upon the presence of the accused persons and the accused persons will naturally comply with the said requirement of the Court. Unless such an order is passed or direction is given by the Court concerned, the accused persons will be at liberty to remain absent and at the same time, the accused persons will not be in a position to take defence that as evidence was recorded against them in their absence, it is not a legal trial. The accused or their advocates will also not apply for adjournment on the ground of the absence of the accused persons since the trial Court can proceed in absence of the accused persons.

#. With these observations, this Revision Application is disposed of and the order of the Sessions Court will naturally stand modified in the terms and observation made hereinabove. Rule is made absolute to the above extent.

[D.P. BUCH, J.]

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kks/-